

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

June 17, 2003

Agenda ID #2381  
Ratesetting

TO: PARTIES OF RECORD IN INVESTIGATION 00-11-002

This is the draft decision of Administrative Law Judge (ALJ) Brown. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ BROWN** (Mailed 6/17/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Institution Investigation Into the Adequacy of the Southern California Gas Company's and San Diego Gas & Electric Company's (SDG&E) Gas Transmission Systems to Serve the Present and Future Gas Requirements of SDG&E's Core and Noncore Customers.

Investigation 00-11-002  
(Filed November 2, 2000)

**OPINION DENYING PETITION FOR MODIFICATION****Summary**

This decision denies a petition for modification (Petition) filed jointly by Cabrillo I, LLC, Cabrillo II, LLC (Cabrillo), and Duke Energy North America (DENA) of Decision (D.) 02-11-073. The relief requested in the Petition has either already been addressed, clarified, or modified as needed, or pertains to the implementation of the Comprehensive Settlement agreement (CSA) in the Gas Industry Restructuring (GIR) proceeding, Investigation (I.) 99-07-003, D.01-02-018, which cannot be addressed in this proceeding.

**Background**

On November 21, 2002, the Commission issued D.02-11-073. On January 30, 2003, Cabrillo and DENA filed the Petition to modify D. 02-11-073. Responses were filed by San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas), San Diego County Air Pollution Control District (SDAPCD), the California Department of Water Resources (DWR), and The Utility Reform Network (TURN).

### **Petition for Modification**

The focus of the Petition was on one provision of D.02-11-073—the order directing SDG&E to commence an open season for the allocation of firm capacity (Ordering Paragraph 4). The Decision reflected the fact that the Commission found an open season to be an effective way to allocate firm rights to transportation capacity on the SDG&E system. Cabrillo and DENA argued in their Petition that circumstances had changed since the record was developed and modifications were necessary to the Decision to prevent consequences not in the public interest.

Specifically, Cabrillo and DENA posited that going forward with the open season as ordered would (1) prevent them from burning backup fuel oil in the event of natural gas curtailments due to SDAPCD restrictions; (2) impose higher costs of electricity; and (3) diminish the value of firm capacity due to the mismatch between monthly bidding basis for the open season and the hourly basis for allocating curtailments to electric generation customers under SDG&E's Rule 14. To prevent these consequences, Cabrillo and DENA requested that the Commission modify D.02-11-073 to defer the open season and establish an hour-by-hour basis for bidding in the open season.

#### **A. Fuel Oil Burning Capability**

Both Cabrillo and DENA are subject to Reliability Must-Run (RMR) agreements with the California Independent System Operator (ISO) to ensure reliability of electric service for the San Diego area. Although Cabrillo and DENA regularly use natural gas as their primary fuel, they both are required under the RMR agreements to maintain fuel oil burning capability. However, under SDAPCD rules for the emissions of air pollutants in the San Diego area, Cabrillo and DENA may only burn fuel oil when *firm* gas transportation service,

but not *interruptible* gas transportation service, is curtailed by SDG&E. Cabrillo and DENA were concerned that if the open season was not deferred, they would be required to bid for firm capacity in excess of their actual physical needs because of the monthly bidding requirement, and as a result capacity on the SDG&E system would be oversubscribed and they would be awarded *interruptible*, rather than *firm*, service. Cabrillo and DENA would then not be allowed to burn fuel oil during a gas curtailment under their RMR agreements, threatening electric reliability in the San Diego area.

### **B. Hour-By-Hour Bidding**

Under SDG&E's Rule 14, the curtailment protocols for electric generation customers are administered by looking at hourly usage during the previous like day. D.02-11-073 requires customers to bid on firm capacity based on a desired aggregate monthly amount. This mismatch could create inequities should it be necessary to curtail.

### **Responses**

SDAPCD supported Cabrillo and DENA's request for a deferral of the open season because SDAPCD needed more time to evaluate the interaction of (1) the open season bidding process of firm gas transportation capacity; (2) the RMR requirements of the ISO; (3) its own rules on firm/interruptible service and the oil firing of these plants in the event of a natural gas curtailment; and (4) SDG&E's current pro rata gas curtailment procedure.

TURN and DWR also supported the suspension of the open season to allow for the potential resolution of the apparent conflict between the different agency regulations, ISO, SDAPCD, and Commission, and the SDG&E open season rules.

SDG&E opposed deferring the open season and argued that it should be permitted to move forward expeditiously with the process. SDG&E proposed that the Petition be denied in its entirety because, since Cabrillo and DENA filed their Petition, the issue of hourly bidding was addressed by SDG&E in Advice Letter (AL) 1364-G, filed February 14, 2003. In addition, SDG&E requested in AL 1364-G that its open season be extended by one month. On February 27, 2003, SDG&E filed AL 1365-G to revise tariff Rule 14 so that Electric Generator (EG) customer pro rata allocations during curtailment events is based upon firm hourly entitlement rather than consumption during the previous “like day.”

### **Discussion**

Without addressing the merits of Cabrillo and DENA’s Petition, it appears that most of the issues raised in the Petition have been clarified or modified since the Petition was filed. To begin, SDG&E extended its open season for one month. Then, with the approval of AL 1364-G, bidders were allowed to bid on an hourly basis if they chose.<sup>1</sup> This modification dispenses with Cabrillo’s and DENA’s concerns regarding monthly rather than hourly bidding. In addition, SDG&E’s Rule 14 was adjusted to agree with the hourly bid so there is no longer any conflict between the curtailment rules and the open season allowance for hourly bidding. These adjustments to the open season bidding rules and Rule 14 address the major focus of the Petition and the concerns raised by DWR and TURN.

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<sup>1</sup> The Energy Division signed out ALJ 1364-G, with an effective date of February 14, 2003.

Since the Petition was filed, SDAPCD has modified its stance on its rules concerning *firm/interruptible* service and the burning of oil. Under SDAPCD's modified interpretation of the rules, if Cabrillo and DENA bid their best estimate for firm service in the open season, but SDG&E's firm service is oversubscribed and there is a curtailment while the EGs are running on interruptible capacity, SDAPCD would consider the burning of oil, in the event of the implementation of the curtailment protocols, as a force majeure. SDAPCD's rules already allow for an oil burning exception in the event of a force majeure, and it is now expanding its interpretation of the force majeure exception to apply to the Rule 14 curtailment protocols.

The Petition also makes reference to the approval of pending tariffs filed by SoCalGas for implementation of the CSA in the GIR proceeding, I.99-07-003, D.01-12-018. It is not appropriate to address issues relating to that decision in this proceeding.

Cabrillo and DENA's Petition to Modify D.02-11-073 is denied on the grounds that all the issues raised in the Petition that could appropriately be corrected, clarified, or modified have already been addressed.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and Reply Comments were filed on \_\_\_\_\_.

### **Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner and Carol A. Brown is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Since Cabrillo and DENA filed their Petition to Modify D.02-11-073 on January 30, 2003, all of the issues raised in the Petition have been clarified or modified.
2. The Petition requests that SDG&E's open season be extended, and SDG&E voluntarily extended its open season by one month.
3. The Petition requests that bidders in the open season be allowed to bid on an hourly basis, rather than be limited to a monthly basis, and with Advice Letter 1364-G, SDG&E allowed bidders to bid on an hourly basis if they chose.
4. The Petition requests that SDG&E's Rule 14 be adjusted to match the curtailment protocol with the hourly bidding, and Advice Letter 1365-G provides for this adjustment.
5. The Petition raises the concern that under current SDAPCD rules, Cabrillo and DENA would not be permitted to burn fuel oil under their RMR contracts with the ISO if they were awarded interruptible transportation service instead of firm service.
6. SDAPCD has modified its interpretation of its rules to allow the force majeure exception to apply to Rule 14 curtailment protocols for interruptible transportation service and allow the burning of fuel oil.
7. Any requested relief that pertains to the implementation of the CSA in the GIR, I.99-07-003, D.01-12-018 is not appropriate in this proceeding.

**Conclusion of Law**

The Petition to Modify D.02-11-073 should be denied as all of the issues raised in the Petition have been addressed, clarified, or modified since the Petition was filed on January 30, 2003, or are not appropriate to be addressed in this proceeding.



**O R D E R**

**IT IS ORDERED** that the petition for modification of Decision 02-11-073 filed by Cabrillo I, LLC, Cabrillo II, LLC and Duke Energy North America is hereby denied.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.